

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 LILLIAN GRADILLAS ET AL.,

No. C 12-03697 CRB

12 Plaintiffs,

**ORDER GRANTING MOTION TO
AMEND COMPLAINT AND
VACATING MOTIONS TO DISMISS**13 v.
14 LINCOLN GENERAL INSURANCE CO.
15 ET AL.,

16 Defendants. /

17 Plaintiffs in this case filed a complaint in San Francisco Superior Court on February
18 23, 2012 alleging breach of contract and breach of the covenant of good faith and fair dealing
19 against Lincoln General Insurance Company and Does 1 though 10. See Not. of Removal
20 (dkt. 1), Ex. 1 (Compl.). On April 17, 2012, Plaintiffs substituted Walshire Assurance
21 Company for Doe 2 and Kingsway Financial Services, Inc. for Doe 3. Pl's Opp'n to Mots. to
22 Dismiss (dkt. 26) at 6. On July 13, 2012, Defendant Kingsway America, Inc. removed the
23 action to this Court. See Not. of Removal.

24 The parties dispute whether leave to amend is available to Plaintiffs as of right or must
25 be granted by this Court pursuant to Federal Rule of Civil Procedure 15. See Pls.' Opp'n to
26 Mots. to Dismiss at 7. In their Opposition to the Motions to Dismiss, Plaintiffs ask that they
27 be allowed to immediately file their First Amended Complaint (FAC), Pls.' Opp'n at 19, and
28 they have attached their proposed FAC. See Pls.' Opp'n, Ex. A. Under Federal

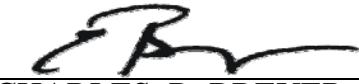
1 Rule of Civil Procedure 15(a)(2), “[t]he court should freely give leave when justice so
2 requires.” Amendment should be granted when it will not cause the opposing party undue
3 prejudice, is not sought in bad faith, and is not an exercise in futility. DCD Programs, Ltd. v.
4 Leighton, 833 F.2d 183, 186 (9th Cir. 1987). The Court has carefully reviewed the parties’
5 papers, including Defendants’ contention that they will be prejudiced by amendment.
6 See Reply re Defendant Kingway’s Motion to Dismiss (dkt. 27) at 4-5; Reply re Defendant
7 Walshire’s Mot. to Dismiss (dkt. 28) at 6. The Court finds that there is no reason to deny
8 amendment at this early stage of the litigation.

9 Accordingly, this Court construes Plaintiffs’ Opposition as a request for leave to
10 amend, and GRANTS that request. The FAC, attached to the Plaintiffs’ Opposition as
11 Exhibit A, is the operative complaint in this case.

12 Defendants’ Motions to Dismiss (dkts. 6 and 9), calendared for September 14, 2012,
13 are hereby VACATED.

14 **IT IS SO ORDERED.**

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16 Dated: September 24, 2012
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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE